A

Ho Sek Kong v Public Prosecutor

B

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05–98 OF 2005
SURIYADI, HASAN LAH AND AHMAD MAAROP JJCA
8 OCTOBER 2010

C

Criminal Law — Murder — Appeal against conviction and sentence — Whether death caused by appellant — Whether trial judge erred in accepting evidence of prosecution witness as true — Whether trial judge erred in accepting appellant's statement to witness as confession

D

Evidence — Confession — Admissibility of confession — Statement by appellant to prosecution witness — Witness previously lied to police — Whether statement of appellant a confession

E

Evidence — Witness — Interested witness — Whether evidence should be accepted — Whether evidence of witness properly evaluated by trial judge — Credibility — Witness previously lied to police — Whether trial judge correct in accepting evidence of prosecution witness as true

F

The appellant was charged with the murder of his mother, Cheah Seaw Meng ('the deceased') at the deceased's house. The forensic pathologist certified the cause of death as head injury due to multiple blunt traumas. The prosecution's case against the appellant rested on the evidence of the appellant's sister's boyfriend Wan Kwang Woh ('Wan') who stayed over at the deceased's house on

G

certain nights and had the keys to the house. Wan was initially arrested as a suspect in the murder of the deceased. However his narration of the events of the night of the murder, in particular on what the appellant said and the conduct of the appellant was accepted by the trial judge as the truth. Wan testified that when he arrived at the deceased's house at about 7pm on the date

H

of the murder he had met the appellant coming out of the toilet clad only in a towel. According to Wan, the appellant had at that time disclosed to him that he had committed the murder but that he had not intended to do it (the appellant's statement). During that time apart from Wan and the appellant there was nobody else in the house. The trial judge had accepted the appellant's

I

statement to Wan as a confession under s 17(2) of the Evidence Act 1950. and held that the statement suggested an inference that the appellant had committed the offence with which he stood charged. When the trial judge held that the prosecution had proven a prima facie case against the appellant, his defence was called. In his defence the appellant denied any involvement with

the murder, and attempted to indirectly implicate Wan in the murder. The appellant gave evidence that when he left the deceased's house at 6pm, Wan was in the house with the deceased, who was alive and well, but that when he returned home at 7.45pm the deceased was dead and Wan was no longer to be found in the house. The trial judge, who found the appellant's defence to be an afterthought, concluded that the appellant was guilty of the charge and sentenced him to death. This was the appellant's appeal against that conviction and sentence. The appellant contended that his conviction was not safe because the prosecution's case rested substantially on Wan's evidence and Wan was not a credible witness because he had admitted that he had lied previously to the police. The appellant submitted that the trial judge had erred in accepting Wan's evidence as the truth because he had failed to consider that Wan was also a suspect in the case and an interested witness.

Held, dismissing the appeal:

(1) While appreciating the evidence of a witness, the approach ought to be to ensure that the evidence of the witness read as a whole appeared to have a ring of truth. In the present case, the approach and the tests for accepting or rejecting the evidence of a witness were applied by the trial judge in evaluating Wan's evidence. Upon making maximum evaluation of Wan's evidence, the trial judge found him to be a credible witness whose evidence about the events on the night of the murder were true despite Wan's admission of having previously lied to the police. It was found that the trial judge was entitled to arrive at this finding and that proper weight and consideration ought to be given to the trial judge's views as to the credibility of Wan. In the light of the fact that Wan had not witnessed the murder and bearing in mind that there was no set of rules for natural reaction, it was found that the trial judge was correct in accepting Wan's evidence in court as the truth (see paras 7 & 9–12).

(2) The appellant's statement to Wan that he had committed the murder but had not intended to do it was a very important piece of evidence in this case and was pivotal in the determination of the guilt or innocence of the appellant. The trial judge was right in admitting this statement as a confession made voluntarily by the appellant. It is settled law in this country that once the court is satisfied that the confession is voluntarily made and that it is true that the accused may be convicted solely on the strength of his confession. Further, the trial judge also found that there was corroboration to the confession in the form of circumstantial evidence. Thus on the evidence available there was no doubt that the appellant caused the death of the deceased (see paras 14 & 16–18).

(3) Based on the evidence of the forensic pathologist as to the cause of death the trial judge concluded that the appellant had intended to cause his mother's death when he inflicted those injuries upon her. This court

agreed with that conclusion and the trial judge's finding that the prosecution had proven a prima facie case of murder against the appellant (see paras 19 & 20).

(4) The trial judge was right to have found the appellant's defence, which was an attempt to indirectly implicate Wan, to be an afterthought. This court agreed with the trial judge's conclusion that the appellant had failed to raise any reasonable doubt in the prosecution's case. As such the appellant's conviction and sentence were affirmed (see paras 22 & 23).

[Bahasa Malaysia summary

Perayu dituduh dengan pembunuhan ibunya, Cheah Seaw Meng ('si mati') di rumah si mati. Pakar patologi forensik mengesahkan sebab kematian sebagai kecederaan kepala akibat beberapa pukulan benda tumpul. Kes pihak pendakwaan terhadap perayu berasaskan kepada keterangan teman lelaki adik perempuan perayu Wan Kwang Who ('Wan') yang tinggal semalaman di rumah si mati pada malam-malam tertentu dan mempunyai kunci rumah tersebut. Wan pada mulanya ditangkap sebagai suspek dalam pembunuhan si mati. Tetapi selepas menerangkan kejadian pada malam pembunuhan, khususnya pada apa yang perayu katakan dan tindakan perayu diterima oleh hakim bicara sebagai benar. Wan memberikan keterangan bahawa apabila dia sampai di rumah si mati pada kira-kira 7 petang pada tarikh pembunuhan dia bertemu dengan perayu yang keluar dari tandas hanya memakai tuala. Menurut Wan, perayu telah pada masa tersebut mendedahkan kepadanya bahawa dia telah melakukan pembunuhan tetapi dia tidak berniat untuk membuatnya (kenyataan perayu). Pada waktu tersebut, selain daripada Wan dan perayu tidak ada orang lain di dalam rumah tersebut. Hakim bicara menerima kenyataan perayu kepada Wan sebagai pengakuan di bawah s 17(2) Akta Keterangan 1950 dan memutuskan bahawa kenyataan tersebut menyarankan bahawa perayu telah melakukan kesalahan terhadap mana dia dituduh. Apabila hakim bicara memutuskan bahawa pihak pendakwaan telah membuktikan kes prima facie terhadap perayu, dia disuruh membela diri. Di dalam pembelaannya, perayu menafikan apa-apa penglibatan dengan pembunuhan tersebut, dan mencuba untuk melibatkan Wan secara tidak langsung dalam pembunuhan tersebut. Perayu memberikan keterangan bahawa apabila dia meninggalkan rumah si mati pada pukul 6 petang, Wan berada di dalam rumah dengan si mati, yang masih hidup dan sihat, tetapi apabila dia pulang ke rumah pada pukul 7.45 petang si mati telah mati dan Wan tidak lagi berada dalam rumah itu. Hakim bicara, yang mendapati pembelaan perayu sebagai fikiran semula, menyimpulkan bahawa perayu bersalah atas pertuduhan tersebut dan memberikan hukuman mati. Ini adalah rayuan perayu terhadap sabitan dan hukuman. Perayu menghujah bahawa sabitannya tidak selamat kerana kes pihak pendakwaan berasaskan secara substansial kepada keterangan Wan dan Wan bukan saksi yang boleh dipercayai kerana dia telah mengaku bahawa dia pernah sebelum ini

berbohong kepada polis. Perayu menghujah bahawa hakim bicara telah terkhilaf dalam menerima keterangan Wan sebagai benar kerana dia gagal mengambil kira bahawa Wan juga adalah suspek di dalam kes tersebut dan seorang saksi yang berkepentingan. A

Diputuskan, menolak rayuan: B

(1) Dalam menghargai keterangan saksi, pendekatan adalah untuk memastikan bahawa keterangan saksi dibaca secara keseluruhan menampakkan kebenaran. Di dalam kes ini, pendekatan dan ujian untuk menerima atau menolak keterangan seseorang saksi diaplikasi oleh hakim bicara dalam menilai keterangan Wan. Selepas penilaian maksimum keterangan Wan, hakim bicara mendapatinya sebagai saksi yang boleh dipercayai yang keterangannya tentang kejadian pada malam pembunuhan adalah benar walaupun Wan mengakui pernah berbohong sebelum ini kepada pihak polis. Adalah didapati bahawa hakim bicara berhak untuk membuat penemuan ini dan beban dan pertimbangan yang wajar harus diberikan kepada pandangan hakim bicara mengenai kebolehpercayaan Wan. Berdasarkan fakta bahawa Wan tidak menyaksikan pembunuhan tersebut dan mengambilkira bahawa tidak ada peraturan yang ditetapkan untuk reaksi semulajadi, didapati bahawa hakim bicara adalah betul dalam menerima keterangan Wan di mahkamah sebagai benar (lihat perenggan 7 & 9–12). C D E

(2) Kenyataan perayu kepada Wan bahawa dia telah melakukan pembunuhan tersebut tetapi tidak berniat untuk melakukannya adalah satu keterangan yang amat penting di dalam kes ini dan adalah penting dalam menentukan kesalahan atau ketidakbersalahan perayu. Hakim bicara adalah betul dalam menerima kenyataan ini sebagai pengakuan yang dibuat secara sukarela oleh perayu. Adalah undang-undang matan di negara ini bahawa jika mahkamah berpuashati bahawa pengakuan dibuat secara sukarela dan adalah benar bahawa tertuduh boleh disabitkan semata-mata atas kekukuhan pengakuannya. Selanjutnya, hakim bicara juga mendapati bahawa terdapat keterangan sokongan kepada pengakuan tersebut dalam bentuk keterangan ikut keadaan. Oleh demikian atas keterangan yang ada tidak ada keraguan bahawa perayu menyebabkan kematian si mati (lihat perenggan 14 & 16–18). F G H

(3) Berdasarkan keterangan pakar patologi forensik berkenaan dengan sebab kematian hakim bicara memutuskan bahawa perayu mempunyai niat untuk menyebabkan kematian ibunya apabila dia menyebabkan kecederaan tersebut ke atasnya. Mahkamah ini bersetuju dengan keputusan tersebut dan dapatan hakim bicara bahawa pihak pendakwaan telah membuktikan kes prima facie pembunuhan terhadap si mati (lihat perenggan 19 & 20). I

A (4) Hakim bicara adalah betul dalam mendapati pembelaan perayu, yang merupakan cubaan untuk membabitkan Wan secara tidak langsung, sebagai satu fikiran semula. Mahkamah ini bersetuju dengan keputusan hakim bicara bahawa perayu telah gagal untuk membangkitkan apa-apa keraguan yang munasabah dalam kes pihak pendakwaan. Oleh demikian
B sabitan dan hukuman perayu disahkan (lihat perenggan 22 & 23).]

Notes

For cases on admissibility of confession, see 7(1) *Mallal's Digest* (4th Ed, 2011 Reissue) paras 855–859.

C For cases on appeal against conviction and sentence, see 4 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1341–1343.

For cases on interested witness, see 7(1) *Mallal's Digest*(4th Ed, 2011 Reissue) paras 3180–3192.

D **Cases referred to**

Abdul Rashid v PP [1994] 1 SLR 119, CA (refd)
Bhojraj v Sita Ram AIR 1936 PC 60 (refd)
Herchun Singh & Ors v PP [1969] 2 MLJ 209, FC (refd)
Juraimi bin Husin v PP [1998] 1 MLJ 537; [1998] 2 CLJ 383, CA (refd)
E *Lemanit v PP* [1965] 2 MLJ 26, FC (refd)
Osman & Anor v PP [1968] 2 MLJ 137, PC (refd)
PP v KK [2007] 6 CLJ 367, HC (refd)
PP v Kok Wah Kuan [2008] 1 MLJ 1; [2007] 6 CLJ 341, FC (refd)
Ryan v Jarvis [2005] UPKC 27 (refd)
F *Sathiadas v PP* [1970] 2 MLJ 241 (refd)
Sinaraju v PP [1961] 27 MLJ 33, CA (refd)
State of Uttar Pradesh v Devendra Singh AIR 2004 SC 3690 (refd)
Sucha Singh v State of Punjab (2003) Cri LJ 3876 (refd)
Yap Sow Keong v PP [1947] MLJ 90, CA (refd)

G

Legislation referred to

Evidence Act 1950 s 17(2)

Appeal from: Criminal trial No 45–25 of 2001 (High Court, Kuala Lumpur)

H *Richard Ho (Chambers of Richard Ho & Yap) for the appellant.*
Awang Armadajaya Awang Mahmud (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Ahmad Maarop JCA:

I

[1] The appellant, Ho Sek Kong ('Ho') was charged in the High Court with the murder of his mother, the late Cheah Seaw Meng ('the deceased') between 4pm – 6.30pm on 5 October 2000 at the deceased's house at Block 44–6–11,

Taman Naga Emas, Jalan 4/140, Salak Selatan, Brickfields, Kuala Lumpur. Ho was found guilty and sentenced to death. He preferred an appeal to this court.

BRIEF FACTS OF THE CASE

[2] The substance of the evidence led by the prosecution is as follows. The deceased's house was occupied by the deceased, her son Ho, her adopted son Lee Loy Fatt, her daughter, Ho Kwai Ying ('SP3') and her boyfriend, Lee Lai. Wan Kwang Woh ('SP4'), who was then SP3's boyfriend also stayed over at that house on certain nights and he had the keys to the house. On 5 October 2000, at about 6pm after work, SP4 returned to his house at 103, Kg Kerayong, Off Jalan Lapangan Terbang Lama Kuala Lumpur. Then he left his house to go to the deceased's house. When he arrived at the deceased's house he found the front door open and the grille to it was closed but not locked. When he went in he saw blood splattered on the wall of the deceased's bedroom. He saw the deceased's body lying on the floor next to the bed in the bedroom. He went near the body to have a look. He saw a lot of blood. He immediately left the room to look for someone. Suddenly he saw Ho coming out of the toilet, clad only in a towel. Ho shouted at him. SP4 was then in the living room. Ho told SP4 not to make noise. Ho asked SP4 to sit. Ho told SP4 that he did it but had not intended to do it (*dia yang buat tapi tidak ada niat nak buat*). SP4 said he understood what Ho meant. When asked by SP4 why he did it, Ho replied that he had not intended to do it. At that time apart from SP4 and Ho, there was nobody else in the house. Then Ho told SP4 to calm down and not to speak about the incident to his sister — SP3 (*OKT beritahu saya supaya jangan beritahu perkara ini kepada adik perempuannya iaitu SP3*). Ho then went into his room to put on his clothes. Shortly thereafter, Ho left the house followed by SP4. SP4 asked Ho what should be done? Ho told SP4 not to do anything and to take it that he had not seen anything (*OKT beritahu saya supaya anggap tidak buat apa-apa dan tidak nampak apa-apa*). Then they went into the lift. Nothing was said between them in the lift as there were other people. When they reached the ground, SP4 asked Ho again what to do. Ho told SP4 to leave the place. SP4 went back up into the house to fetch his helmet. SP4 then left the house after locking up the grille. SP4 returned to his own house at Kg Kerayong. At his house he telephoned the deceased's house but nobody picked up the phone. Ho called his brother and searched for his father but failed to get in touch with any of them. He then left his house to fetch SP3 from her place of work. When SP4 met SP3, he saw SP3 in a state of panic. SP3 told SP4 that Ho had called her and told her that the deceased was covered with a lot of blood. SP4 and SP3 immediately departed for the deceased's house and upon arrival there SP4 saw many people whom he could not recognise.

[3] In her evidence SP3 testified that at 5pm that day (5 October 2000), she had called home and spoke to Ho who answered her call. When she asked where the deceased was, Ho told her that the deceased was sleeping. At 7pm on the same day, SP3 again called home and spoke to Ho. This time Ho told SP3 that the deceased vomited a lot of blood. When SP3 asked what happened, Ho said, 'tidak tahu, tidak tahu' and asked SP3 to come home immediately.

[4] The investigation officer ('SP12') arrived at the house at about 9.45pm. The forensic pathologist, Dr Shahrom Abdul Wahid ('SP9') who was summoned to the house, arrived at about 12.30am and assisted SP12 in his investigation at the scene. The deceased's body was later removed to the UKM Hospital where SP9 performed a post mortem. SP9 found a total of 55 wounds on the body. In his internal examination, SP9 found that there was a fissured fracture about 19cm long, across the left orbital plate, extending down to the floor of the right middle cranial fossa. Facial bones demonstrated fractures as follows:

(a) Fractured nasal bone.

(b) Fractured maxillary alveolus bilaterally.

(c) Fractured hard palate.

(d) Bilateral comminuted mandibular fracture.

SP9 noted subarachnoid haemorrhage, mainly basal and over the right parieto temporal area. SP9 noted cortical contusions at the right temporal lobe, and the undersurfaces of the frontal lobes bilaterally. The circle of willis was intact.

[5] SP9 certified the cause of death as head injury due to multiple blunt traumas.

DECISION

[6] The prosecution's case against Ho rests substantially on the evidence of SP4. There is also the evidence of SP3. However, her evidence is only a part of the circumstantial evidence against Ho. Standing alone her evidence is not sufficient to connect Ho with the murder. Without SP4's evidence there is no prima facie case against Ho. So it was not unexpected that before us learned counsel for Ho attacked the evidence of SP4. Learned counsel contended that Ho's conviction was not safe because SP4 was not a credible witness. Learned counsel argued that the learned trial judge erred in accepting SP4's evidence essentially because in his evidence SP4 admitted that he had lied to the police. Learned counsel's argument appeared to be based on the maxim falsus in uno falsus in omnibus (false in one thing, false in everything). We are unable to

accept that submission. In this regard, commenting on the maxim, in *Sucha Singh v State of Punjab* (2003) Cri LJ 3876 (SC) at pp 3881–3882, the court said:

> The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'... if a whole body of a testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment … An attempt has to be made to separate grain from the chaff, truth from falsehood.

[7] While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief (see *State of UP v MK Anthony* AIR 1985 SC 48). The Privy Council has stated that the real tests for either accepting or rejecting the evidence of a witness are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case (see *Bhojraj v Sita Ram* AIR 1936 PC 60). In our judgment, the approach and the tests as aforesaid were applied by the learned trial judge in evaluating SP4's evidence in the present case.

[8] SP4, who initially was arrested as a suspect in this case was cross-examined at length by the learned counsel who represented Ho in the court below. Various challenges and allegation were put to SP4. Amongst others, it was put to him by Ho's counsel that he was released by the police to be the prime prosecution witness to testify that Ho committed the offence, and that he (SP4) lied so well in giving his statement to the police that he was freed and the accused was charged. SP4 denied the suggestion. It was put to SP4 that he lied to the police when he told the latter that he did not commit the murder. SP4 denied the allegation. Then, following that denial by SP4, a rather tricky challenge was put to him. It was put to him that when he told the police that he committed the murder it was a lie. SP4 denied the allegation. It was put to

SP4 that Ho did not tell him that he (Ho) caused the deceased's death but not with the intention of killing her. SP4 disagreed with the suggestion. It was put to SP4 that Ho did not come out of the toilet clad only in a towel. SP4 disagreed with the suggestion. It was put to SP4 that Ho did not at any time tell him not to inform SP3 about the murder. SP4 disagreed with the suggestion. Questioned on the reason why he lied to the investigation officer when he gave his statement, SP4 said he wanted to help his friend (Ho). SP4 said at that time he did not know what to do.

[9] Upon making maximum evaluation of his evidence, the learned trial judge found SP4 to be a credible witness whose evidence about the events on the evening in question was accepted by him as the truth inspite of SP4's admission of having previously lied to the police. This is what the learned judge said:

> SP4 was also initially arrested as a suspect in this murder case. He admitted in court that he had lied to the police about the killing in order to protect the accused, and that the version he related to the court was truly what had transpired. SP4 was however not cross-examined on what specifically his lie was to the police. This court's assessment on SP4 was that he was truthful in his answers particularly under cross examination, and I found him to be a credible witness inspite of his admission that he had previously lied to the police. As such his narration of the events on that fateful evening, in particular on what the accused said and the conduct of the accused was accepted by this court as the truth.

[10] In our view the learned trial judge was entitled to arrive at the aforesaid finding. We find no reason to disagree with him. The view of the learned trial judge as to the credibility of SP4 must be given proper weight and consideration (see *Herchun Singh & Ors v Public Prosecutor* [1969] 2 MLJ 209 at p 211). Indeed, the true or false note is generally more audible to the judge who hears and sees the witnesses than to the appellate court reading the record (per Lord Hoffman in *Ryan v Jarvis* [2005] UPKC 27). We also have not lost sight of learned counsel's argument that the reason given by SP4 as to why he lied previously to the investigation officer (ie that he wanted to protect Ho) was inherently improbable because according to learned counsel it was not natural for someone who had witnessed a crime not to report it to the authority, and instead withhold the identity of the perpetrator. We cannot accept that submission. First, it must be made clear that SP4 was not 'someone who had witnessed' the murder. His evidence was that Ho made certain statement to him which the court below later held to be a confession. It would have been better for SP4 to disclose the statement to the police earlier and/or relate to SP3 at the first available opportunity what Ho told him. It is also easy to say that SP4 should have done this and that, or that he should not have done this and that. But then there is no set rules of natural reaction. This was clearly explained in the *State of Uttar Pradesh v Devendra Singh* AIR 2004 SC 3690 at p 3692:

> Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Some may remain tight lipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

[11] Having considered SP4's evidence in the appeal record ourselves and the reasons given by the learned trial judge, we find no reason to disagree with him.

[12] Although SP4 did not witness the killing of the deceased, his testimony of what he saw when he arrived at the house at about 7pm on 5 October 2010, what Ho told him when he met Ho in the house, as well as Ho's conduct provided the learned trial judge with the crucial evidence necessary in the determination of the question — who caused the deceased's death? Of course we must add that it was not disputed, and indeed on the available evidence the fact of the deceased's death had been proven beyond reasonable doubt. The question is whether the deceased's death was caused by Ho? The answer lies in SP4's evidence.

[13] To reiterate the material part of SP4's evidence, when he arrived at the deceased's house, he found the front door open and the grille to it was closed but not locked. When he went in he saw blood splattered on the wall of the deceased's bedroom. He saw the deceased's body lying on the floor next to the bed in the bedroom. He went near the body to have a look. He saw a lot of blood. He immediately left the room to look for someone. Suddenly he saw Ho coming out of the toilet, clad only in a towel. Ho shouted at him. SP4 was then in the living room. Ho told SP4 not to make noise. Ho asked SP4 to sit. Ho told SP4 that he did it but had not intended to do it (*dia yang buat tapi tidak ada niat nak buat*). SP4 said he understood what Ho meant. When asked by SP4 why he did it, Ho replied that he had not intended to do it. At that time apart from SP4 and Ho there was nobody else in the house. Then Ho told SP4 to calm down and not to speak about the incident to his sister — SP3 (*OKT beritahu saya supaya jangan beritahu perkara ini kepada adik perempuannya iaitu SP3*). Ho then went into his room to put on his clothes. Shortly thereafter, Ho left the house followed by SP4. SP4 asked Ho what should be done? Ho told SP4 not to do anything and to take it that he had not seen anything (*OKT*

beritahu saya supaya anggap tidak buat apa-apa dan tidak nampak apa-apa). Then they went into the lift. Nothing was said between them in the lift as there were other people. When they reached the ground, SP4 asked Ho again what to do. Ho told SP4 to leave the place. SP4 went back up into the house to fetch his helmet. SP4 then left the house after locking up the grille. SP4 returned to his own house at Kg Kerayong.

[14] Ho's statement to SP4 that he did it but had not intended to do it (*dia yang buat tapi tak ada niat nak buat*) is a very important piece of evidence in this case and was pivotal in the determination of the guilt or innocence of Ho. Upon careful consideration of that evidence, the learned trial judge accepted it and held that that statement made by Ho to SP4 suggested an inference that he (Ho) had committed the offence with which he stood charged. The learned trial judge also found that Ho made the statement voluntarily. The learned trial judge therefore admitted (and in our view rightly) that statement as a confession under s 17(2) of the Evidence Act 1950. In this regard, in *Public Prosecutor v KK* [2007] 6 CLJ 367(affirmed by the Federal Court in *Public Prosecutor v Kok Wah Kuan* [2008] 1 MLJ 1; [2007] 6 CLJ 341), the accused child's statement (by telephone) to his tuition teacher 'sorry teacher, teacher sorry, sorry teacher, I don't know why I did it' was held to be a confession under s 17(2) of the Evidence Act 1950. Learned counsel for Ho contended that the learned trial judge erred in arriving at the said conclusion in that he failed to consider the following surrounding circumstances:

(a) SP4 was also a suspect in the case and was remanded for 14 days;

(b) In his evidence under cross-examination SP4 said, 'pada mulanya saya ingin tolong orang. Masa itu saya tak tahu apa nak buat. Semasa dalam tahanan beberapa orang yang direman diminta polis bertanyakan saya. Saya beritahu orang dalam reman itu dan saya tak sangka mereka beritahu perkara itu kepada pihak polis';

(c) SP4 was an interested witness; and

(d) SP4 was not a credible witness.

[15] With respect we cannot accept that contention. First, regarding surrounding circumstance no (ii), we must say at once that it is not clear, and there is no evidence as to what SP4 told the remand prisoners. We do not see how this evidence is relevant to the question whether what Ho told SP4 was a confession or not. The second and more important matter is that the surrounding circumstances pointed out by the learned counsel, although relevant to the question whether SP4 was a credible witness, was not relevant to and could not be considered in the determination of the question whether Ho's statement to SP4 was a confession under s 17(2) of the Evidence Act (see *Lemanit v Public Prosecutor* [1965] 2 MLJ 26 (FC), which was relied upon by

the learned trial judge in this case). Similar view was expressed by the Singapore Court of Criminal Appeal in *Abdul Rashid v Public Prosecutor* [1994] 1 SLR 119 at p 129:

> The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. *The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts.*
>
> The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt?... We need only add that, for a statement to amount to a confession, it need not be of a plenary or unqualified nature and can also be of a non-plenary nature, so long as the statement connects the accused in some way with the offence. (Emphasis added.)

[16] We therefore hold that the learned judge was right in admitting Ho's statement as a confession. The learned trial judge was satisfied that the confession was voluntarily made by Ho. It appeared to us that the learned judge was also convinced of the truth of the confession. Indeed, he said, (at pp 105–106 of the appeal record):

> The confession was made, in my view, under a feeling of sheer remorse and manifested an acknowledgment that he had committed the act against the deceased.

[17] It is settled law that in this country (unlike in India) once the court is satisfied that the confession is voluntarily made and that it is true, the accused may be convicted solely on the strength of his confession (see *Sinaraju v Public Prosecutor* [1961] MLJ 33, *Sathiadas v Public Prosecutor* [1970] 2 MLJ 241, *Yap Sow Keong v Public Prosecutor* [1947] MLJ 90, *Osman & Anor v Public Prosecutor* [1968] 2 MLJ 137, *Juraimi bin Husin v Public Prosecutor* [1998] 1 MLJ 537; [1998] 2 CLJ 383, *Public Prosecutor v KK* [2007] 6 CLJ 367. In *Juraimi bin Husin v Public Prosecutor* [1998] 1 MLJ 537; [1998] 2 CLJ 383 at p 563, Gopal Sri Ram JCA (as he then was) speaking for this court said:

> *Lastly, we accept as settled law that once a confession is admitted in evidence an accused may be convicted solely on its strength. However, as a matter of prudence and practice, the court ought to look for corroboration of the incriminating parts of the confession*. See *Public Prosecutor v Lai Pong Yuen & Ors* [1968] 1 MLJ 12; *Public Prosecutor v Chong Boo See* [1988] 3 MLJ 292; *Hasibullah bin Mohd Ghazali v Public Prosecutor* [1993] 3 MLJ 321. *For our part we regard the requirement of corroboration merely as another way of saying that a confession must not only be voluntary but also true*. See *Abu Bin Husin v Public Prosecutor* [1959] MLJ 5. For, truth is surely established by the presence of independent evidence that corroborates the incriminating parts of a confession. (Emphasis added.)

A So, the requirement of corroboration stated by this court in the above passage was actually another way of saying that the confession must not only be voluntary but must also be true — the very principle established in *Yap Sow Keong, Sathiadas and Osman v Public Prosecutor*. Be that as it may in the instant case, the learned trial judge found (and in our view right rightly) that there were B corroboration to the confession in the form of circumstantial evidence. This is what the learned trial judge said:

> Besides the confession of the accused, there were also circumstantial evidence, which if considered together with that confession point irrestibly to the guilt of the accused in perpetrating this murder.
>
> C The accused was proved to be alone and the last person together with the deceased in the house. This fact was not in dispute since in his own evidence the accused had stated that he was at home the whole day long and when he left the house at 6pm that fateful evening his mother was well and alive in the house. SP3 in her evidence had also stated that she called home at 5pm and the accused informed her that their D mother was then sleeping.
>
> According to the commentary in *Ratanlal & Dhirajlal's Law of Crimes* (at p 1425) 'the fact that the accused and the deceased were 'last seen together' is a circumstance of an incriminating nature against the accused — But the mere fact that the accused was last seen together with the deceased does not necessarily lead to the irresistible E inference that he had committed the crime'. It cannot therefore be the sole basis for a conviction. However, taken together with his own confession, the court may make a inference of his guilt (*State v Shaik Mazhar* AIR 2001 SC 2427).
>
> There were other circumstances found in the narration of the prosecution's case which brought this court, by irrestible inference, that it was the accused who F murdered his mother. When SP4 arrived at the house he saw the accused coming out of the bathroom clad only in a towel. The accused had shouted to SP4 not to make any noise. It may also be pertinent to note that at about 5 to 6pm, SP2, the neighbour, had heard noises from the accused's house, although it was not explained what the noises were. Later, when they both left the house the accused told SP4 not to do anything and pretend that SP4 had not seen anything. This peculiar conduct G of the accused immediately after the recovery of the deceased lying in a pool of blood is most peculiar and suspicious to say the least. I had taken this as one of the circumstantial evidence, which taken together with the other facts and circumstances have the cumulative effect of bringing home the reasonable and irrestible inference that the accused had committed the murder.

H

[18] Thus on the evidence available there is no doubt in our mind that Ho caused the death of his mother.

I **[19]** On the question of intention, the learned trial judge considered the evidence of SP9 and found as follows:

> Dr Shahrom Abdul Wahid (SP9), a forensic expert at the Pathology Department, UKM, undertook a post mortem examination on the deceased on the morning of 6 October 2000. He found 55 wounds consisting of abrasions and lacerations of

various degrees on the dead body. There were also defence wounds on the forearms. The injuries were a result of blows to the body using a blunt object. The injuries to the deceased's head were fatal and SP9 opined that those injuries were consistent with a homicidal attack. The cause of death was determined as 'head injury due to multiple blunt trauma'. SP9 also visited the scene of the crime when the deceased's body was still there. He saw the blood stains on the floor, walls and the bed. He found the deceased head to be in a big pool of blood suggesting that the deceased had been beaten several times on the head and that the injuries to the head were serious. SP9 also testified that the blood stains on the walls were that of spatters and sprays, the latter being the result of incised wounds with a sharp object. The estimated time of death was between 4pm till 9pm on 5 October 2000. This court accepted the opinion of SP9 and concluded that the deceased was brutally attacked with a blunt instrument, and succumbed to her wounds, notably those to her head.

Looking at the wounds from the post mortem photographs (P4) and after considering SP9's testimony this court found that the accused had intended to cause his mother's death when he inflicted those injuries upon her. His act fell within sub-s (b), (c) and (d) of s 300 of the Penal Code which states:

Culpable homicide is murder —

(b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

[20] We agree with the learned trial judge's conclusion. The learned trial judge was therefore right when he held that the prosecution had proven a prima facie case of murder against Ho.

[21] When his defence was called, Ho chose to give evidence on oath. He denied killing or harming the deceased. The substance of his evidence is as follows. On 5 October 2000 he was in the house from 9am – 6pm. According to Ho, the deceased was also in the house between 5.30pm – 6pm. Ho said at 6pm he left the house, and at that time the deceased was alive and well. Ho claimed that before he left the house, he saw SP4 in the house, and that when he (Ho) left the house at 6pm, SP4 was in the house with the deceased. Ho said when he returned to the house at 7.45pm, he found the deceased lying in a pool of blood on the bedroom floor — dead. Ho claimed when he returned to the house at that time, SP4 was no longer in the house. Ho said that he saw SP4 again later when SP4 returned to the house with SP3.

[22] Thus, apart from denying his involvement with the murder, the other important element in his evidence was his attempt to indirectly implicate SP4 in the murder when he testified to the effect that when he left the house at 6pm, SP4 was in the house with the deceased (who was then alive and well), and that when he returned home at 7.45pm the deceased was dead and SP4 was no longer to be found in the house. This is a very important element in his evidence. If it was true there was no reason why he should have overlooked it and not put it to SP4 when the latter was being cross-examined. The learned trial judge found (and in our view rightly), that evidence to be an afterthought. Nevertheless, having properly directed himself that the burden of proving Ho's guilt beyond reasonable doubt lay throughout on the prosecution, and that all Ho needed to do to be entitled to an acquittal was to raise a reasonable doubt in the prosecution's case, the learned trial judge carefully considered Ho's evidence in the light of all the evidence available before the court. In the end the learned judge found Ho failed to raise any reasonable doubt in the prosecution's case. He therefore concluded that the prosecution had proved the case against Ho beyond reasonable doubt and found Ho guilty as charged and convicted him.

[23] We have carefully scrutinised the evidence on record ourselves and examined the judgment of the learned trial judge. We are satisfied that Ho's conviction is safe. In the result Ho's appeal is dismissed. The conviction and sentence on Ho are affirmed.

Appeal dismissed.

Reported by Kohila Nesan